

AMENDED IN SENATE JUNE 9, 2011

AMENDED IN SENATE APRIL 7, 2011

SENATE BILL

No. 353

Introduced by Senator Blakeslee

February 15, 2011

An act to amend Sections 11342.520, 11344.1, 11346.1, 11346.3, 11346.45, 11346.5, 11346.9, 11349, 11349.1, 11349.3, 11349.7, 11352, 11353, and 11354.1 of, to add Sections 11342.3, 11342.547, 11346.35, ~~11349.73~~, and 11349.75 to, and to add Article 1.5 (commencing with Section 13090) to Chapter 2 of Part 3 of Division 3 of, and to repeal Section 11349.5 of, the Government Code, and to amend Section 311 of the Public Utilities Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Blakeslee. Regulations: economic analysis.

(1) Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

This bill would also provide that the activities of the office in reviewing and approving regulations, and amendments or repeal of regulations, as prescribed, be exempt from the California Environmental Quality Act.

(2) The act requires that state agencies proposing to adopt regulations, prior to publication of the notice of proposed action, involve parties that would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period. *The act requires an*

agency that does not or cannot comply with that requirement to state the reasons for noncompliance with reasonable specificity in the rulemaking record. The act also provides that these requirements are not subject to judicial review or a specified review by the office.

This bill would make the requirement to involve parties that would be subject to the proposed regulations in public discussions regarding those proposed regulations applicable to all proposed regulations. The bill would also require, for a major regulation, as defined, that an agency consider and evaluate reasonable alternatives to a proposed regulation that are proposed by a party who would be subject to the proposed regulation. *The bill would require that an agency that does not or cannot comply with these requirements justify its noncompliance by substantial evidence. The bill would repeal the provisions that exempt these requirements from judicial review and review by the office.*

(3) The act requires a state agency proposing to adopt, amend, or repeal any administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals, as prescribed. The act also requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency shall use in making certain determinations relating to cost impacts of regulations.

This bill would require each state agency proposing to adopt, amend, or repeal a regulation, in addition to those existing economic analysis requirements, to prepare a cost-benefit economic analysis of the proposed regulation with specified information. Commencing July 1, 2012, this bill would require an agency that proposes to adopt a major regulation to prepare an ~~additional~~ economic *competitiveness* assessment with specified information.

The bill would establish within the Department of Finance the Office of Economic and Regulatory Analysis, which would be required to review and approve economic analyses of proposed regulations, *including economic competitiveness assessments conducted for proposed major regulations*, and perform other related duties, as specified. The bill would require the Office of Economic and Regulatory Analysis to adopt guidelines that each agency would be required to follow for purposes of performing the economic assessments, *including economic competitiveness assessments*.

(4) The act requires a state agency to issue a notice of proposed action, with specified information relating to the proposed regulation,

including an informative digest and a statement related to the description of cost impacts known to the agency.

This bill would require additional information to be included in the informative digest, as specified, and would eliminate the requirement that the agency include a prescribed statement in the notice of proposed action when no cost impacts are known to the agency. The bill would also require that the notice of proposed action also include a statement of the results of the economic assessment, including the ~~additional~~ economic *competitiveness* assessment performed for a major regulation, and the corresponding approval from the Office of Economic and Regulatory Analysis.

(5) The act requires the office to approve or disapprove regulations submitted by an agency within 30 days. The office is required to make determinations regarding submitted regulations using the standards of necessity, authority, clarity, consistency, reference, and nonduplication, as defined. The act requires that the office disapprove and return to the agency a regulation that does not satisfy prescribed requirements of the act. The act authorizes an agency to appeal to the Governor a decision by the office to disapprove a proposed regulation, as specified.

This bill would define the term ~~“cost-effectiveness”~~ “*competitiveness*” and revise the definition of the term “consistency,” as specified. The bill would increase to 60 days the amount of time in which the office is required to approve or disapprove a submitted regulation. *The bill would require the office to review a major proposed regulation for the standard of competitiveness.* The bill would repeal the provisions that authorize an agency to appeal an office decision to the Governor.

(6) The act requires the office, at the request of any standing, select, or joint committee of the Legislature, to initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication. If the office determines that the regulation no longer meets those standards, the office is required to file an order of repeal of the regulation with the Secretary of State, as specified. *The act requires the office to make its determination within 60 days, and if the office fails to do so, the regulation is deemed to meet those standards.*

This bill would repeal the requirement that a regulation be deemed to meet the review standards if the office fails to make a determination within 60 days.

This bill would require the Office of Administrative Law to convene public workshops, as specified, for determining whether regulations should be subject to the priority review process. The bill would require the office to initiate the priority review process for a regulation, if the office determines it no longer meets the required standards *and an alternative has been proposed*, as specified.

~~This bill would subject a major regulation to a mandatory priority review, that the office would be required to initiate 7 years after the date that the regulation is implemented, as specified.~~

(7) The act exempts the State Water Resources Control Board from the procedures of the act, except as provided.

This bill would require the State Water Resources Control Board to comply with the economic assessment requirements of the act and would specify that an exemption for certain requirements and permits and waivers are limited to those for individual applicants, as specified.

(8) This bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11342.3 is added to the Government
2 Code, to read:
3 11342.3. The activities of the office in reviewing and approving
4 regulations, and amendments or repeal of regulations pursuant to
5 this chapter are exempt from the California Environmental Quality
6 Act (Division 13 (commencing with Section 21000) of the Public
7 Resources Code).
8 SEC. 2. Section 11342.520 of the Government Code is amended
9 to read:
10 11342.520. “Agency” means state agency, as defined in Section
11 11000.
12 SEC. 3. Section 11342.547 is added to the Government Code,
13 to read:
14 11342.547. For purposes of this chapter, “major regulation”
15 means either of the following:
16 (a) Any regulation, or a group of regulations authorized by the
17 same statute, that is proposed for adoption, amendment, or repeal
18 by a regional office, board, or department of a state agency that
19 has a gross economic cost of at least five million dollars

1 (\$5,000,000) in any given year, as estimated by the economic
2 assessment required by subdivision (a) of Section 11346.3.

3 (b) Any regulation, or group of regulations authorized by the
4 same statute, that is proposed for adoption, amendment, or repeal
5 by a state agency that has a gross economic cost of at least
6 twenty-five million dollars (\$25,000,000) in any given year, as
7 estimated by the economic assessment required by subdivision (a)
8 of Section 11346.3.

9 SEC. 4. Section 11344.1 of the Government Code is amended
10 to read:

11 11344.1. The office shall do all of the following:

12 (a) Provide for the publication of the California Regulatory
13 Notice Register, which shall be an official publication of the State
14 of California and which shall contain the following:

15 (1) Notices of proposed action prepared by regulatory agencies,
16 subject to the notice requirements of this chapter, and which have
17 been approved by the office.

18 (2) A summary of all regulations filed with the Secretary of
19 State in the previous week.

20 (3) Summaries of all regulation decisions issued in the previous
21 week detailing the reasons for disapproval of a regulation, the
22 reasons for not filing an emergency regulation, and the reasons for
23 repealing an emergency regulation. The California Regulatory
24 Notice Register shall also include a quarterly index of regulation
25 decisions.

26 (4) Material that is required to be published under Sections
27 11349.7 and 11349.9.

28 (5) Determinations issued pursuant to Section 11340.5.

29 (b) Establish the publication dates and manner and form in
30 which the California Regulatory Notice Register shall be prepared
31 and published and ensure that it is published and distributed in a
32 timely manner to the presiding officer and rules committee of each
33 house of the Legislature and to all subscribers.

34 (c) Post on its Internet Web site, on a weekly basis:

35 (1) The California Regulatory Notice Register. Each issue of
36 the California Regulatory Notice Register on the office's Internet
37 Web site shall remain posted for a minimum of 18 months.

38 (2) One or more Internet links to assist the public to gain access
39 to the text of regulations proposed by state agencies.

SEC. 5. Section 11346.1 of the Government Code is amended to read:

11346.1. (a) (1) The adoption, amendment, or repeal of an emergency regulation is not subject to any provision of this article or Article 6 (commencing with Section 11349), except this section and Section 11349.6.

(2) At least five working days before submitting an emergency regulation to the office, the adopting agency shall, except as provided in paragraph (3), send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. The notice shall include both of the following:

(A) The specific language proposed to be adopted.

(B) The finding of emergency required by subdivision (b).

(3) An agency is not required to provide notice pursuant to paragraph (2) if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.

(b) (1) Except as provided in subdivision (c), if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary to address an emergency, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

(2) Any finding of an emergency shall include a written statement that contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency. The finding of emergency shall also identify each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies. The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.

A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency. If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in

1 sufficient time to have been addressed through nonemergency
2 regulations adopted in accordance with the provisions of Article
3 5 (commencing with Section 11346), the finding of emergency
4 shall include facts explaining the failure to address the situation
5 through nonemergency regulations.

6 (3) The statement and the regulation or order of repeal shall be
7 filed immediately with the office.

8 (c) Notwithstanding any other provision of law, no emergency
9 regulation that is a building standard shall be filed, nor shall the
10 building standard be effective, unless the building standard is
11 submitted to the California Building Standards Commission, and
12 is approved and filed pursuant to Sections 18937 and 18938 of the
13 Health and Safety Code.

14 (d) The emergency regulation or order of repeal shall become
15 effective upon filing or upon any later date specified by the state
16 agency in a written instrument filed with, or as a part of, the
17 regulation or order of repeal.

18 (e) No regulation, amendment, or order of repeal initially
19 adopted as an emergency regulatory action shall remain in effect
20 more than 180 days unless the adopting agency has complied with
21 Sections 11346.2 to 11347.3, inclusive, either before adopting an
22 emergency regulation or within the 180-day period. The adopting
23 agency, prior to the expiration of the 180-day period, shall transmit
24 to the office for filing with the Secretary of State the adopted
25 regulation, amendment, or order of repeal, the rulemaking file,
26 and a certification that Sections 11346.2 to 11347.3, inclusive,
27 were complied with either before the emergency regulation was
28 adopted or within the 180-day period.

29 (f) If an emergency amendment or order of repeal is filed and
30 the adopting agency fails to comply with subdivision (e), the
31 regulation as it existed prior to the emergency amendment or order
32 of repeal shall thereupon become effective and after notice to the
33 adopting agency by the office shall be reprinted in the California
34 Code of Regulations.

35 (g) If a regulation is originally adopted and filed as an
36 emergency and the adopting agency fails to comply with
37 subdivision (e), this failure shall constitute a repeal of the
38 regulation and after notice to the adopting agency by the office,
39 shall be deleted.

(h) The office may approve not more than two readoptions, each for a period not to exceed 90 days, of an emergency regulation that is the same as or substantially equivalent to an emergency regulation previously adopted by that agency. Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e).

SEC. 6. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

(b) (1) A state agency proposing to adopt, amend, or repeal a regulation, or a group of regulations authorized by the same statute, shall prepare an analysis of the benefits and costs, expressed in monetary terms to the extent feasible and appropriate. Benefits and costs shall be identified separately and calculated on a gross basis. Benefits and costs shall be calculated for any year in which benefits or costs are projected to occur in the 10 years following the date the regulation is proposed to be adopted.

(2) ~~All state~~ All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

1 (A) The creation or elimination of jobs within the State of
2 California.

3 (B) The creation of new businesses or the elimination of existing
4 businesses within the State of California.

5 (C) The expansion of businesses currently doing business within
6 the State of California.

7 (3) This subdivision does not apply to the University of
8 California, the Hastings College of the Law, or the Fair Political
9 Practices Commission.

10 (4) Information required from state agencies for the purpose of
11 completing the assessment may come from existing state
12 publications.

13 (c) No administrative regulation adopted on or after January 1,
14 1993, that requires a report shall apply to businesses, unless the
15 state agency adopting the regulation makes a finding that it is
16 necessary for the health, safety, or welfare of the people of the
17 state that the regulation apply to businesses.

18 (d) Commencing July 1, 2012, an agency shall prepare the
19 economic assessment required in subdivision (b) consistent with
20 the guidelines adopted by the Office of Economic and Regulatory
21 Analysis pursuant to Section 13092.

22 (e) Commencing July 1, 2012, an agency shall not submit an
23 initial statement of reasons pursuant to Section 11346.2 or a final
24 statement of reasons pursuant to Section 11346.9 unless and until
25 the agency has received approval from the Office of Economic
26 and Regulatory Analysis pursuant to Section 13093 that the
27 economic assessment required by subdivision (b) was prepared in
28 accordance with the guidelines adopted by the Office of Economic
29 and Regulatory Analysis pursuant to Section 13092.

30 SEC. 7. Section 11346.35 is added to the Government Code,
31 to read:

32 11346.35. (a) (1) Each state agency proposing to adopt,
33 amend, or repeal a major regulation, or a group of regulations
34 authorized by the same statute and that includes a major regulation,
35 shall prepare an ~~additional economic~~ *economic competitiveness*
36 assessment of the proposed regulation in the preparation of the
37 initial statement of reasons pursuant to Section 11346.2, and shall
38 prepare an economic *competitiveness* assessment for each of the
39 alternatives considered by the agency in the preparation of the
40 final statement of reasons pursuant to Section 11346.9.

(2) The economic *competitiveness* assessment shall *evaluate the degree to which the proposed major regulation impacts the cost of doing business in California compared to other states and shall* include all of the following:

~~(A) The economic assessment prepared pursuant to Section 11346.3.~~

~~(B) An analysis of the benefits and costs that cannot feasibly or appropriately be expressed in monetary terms, enumerated and presented in a manner that allows for the consideration of both quantified and nonquantified impacts.~~

~~(C)~~
(A) A distributional assessment that evaluates how ~~certain specific industries, income groups, or geographic regions~~ experience benefits or costs as a consequence of the regulation, including, but not limited to, the following: *industries, income groups, and geographic regions, in both the short term and the long term, will experience job creation or elimination in the state as a result of the regulation.*

~~(i) The analyses of benefits and costs prepared pursuant to subparagraphs (A) and (B).~~

~~(ii) The short-term and long-term creation or elimination of jobs.~~

~~(iii) The cumulative economic impact of the regulation and existing federal, state, and local regulations.~~

~~(iv)~~
(B) The potential for economic leakage as a result of the regulation in which economic activity is relocated from California to another state or country.

~~(v)~~
(C) The impact on the ability of California businesses to compete with other states and to attract businesses to locate in the state.

(D) The effects on sales tax, income tax, and corporation tax revenue to the General Fund, and fee revenues to special funds, as a result of changes in economic activity.

~~(E) An analysis of the cumulative impact of the proposed regulation and any other related regulations enacted pursuant to the same authorizing statute.~~

(E) *An estimated timeframe for how long it will take a regulated entity to comply with the regulation.*

1 (b) The agency shall prepare the economic *competitiveness*
2 assessment required in subdivision (a) consistent with the
3 guidelines adopted by the Office of Economic and Regulatory
4 Analysis pursuant to Section 13092.

5 (c) Prior to submitting the initial statement of reasons pursuant
6 to Section 11346.2, the agency shall have received approval from
7 the Office of Economic and Regulatory Analysis pursuant to
8 Section 13093 that the economic *competitiveness* assessment
9 required by subdivision (a) for the proposed regulation was
10 prepared according to the guidelines adopted by the Office of
11 Economic and Regulatory Analysis pursuant to Section 13092.

12 (d) Prior to submitting a final statement of reasons pursuant to
13 Section 11346.9, the agency shall have received approval from
14 the Office of Economic and Regulatory Analysis pursuant to
15 Section 13093 that the ~~additional economic~~ *economic*
16 *competitiveness* assessment required by subdivision (a) for the
17 proposed regulation and each of the alternatives considered by the
18 agency were prepared according to the guidelines established by
19 the Office of Economic and Regulatory Analysis pursuant to
20 Section 13092.

21 (e) This section shall become operative on July 1, 2012.

22 SEC. 8. Section 11346.45 of the Government Code is amended
23 to read:

24 11346.45. (a) In order to increase public participation and
25 improve the quality of regulations, state agencies proposing to
26 adopt regulations shall, prior to publication of the notice required
27 by Section 11346.5, involve parties that would be subject to the
28 proposed regulations in public discussions regarding those
29 proposed regulations.

30 (b) For any major regulation, an agency shall consider and
31 evaluate alternatives, including the preparation of an economic
32 assessment pursuant to Section 11346.3 *and an economic*
33 *competitiveness assessment pursuant to Section 11346.35* for those
34 alternatives. The consideration and evaluation of alternatives shall
35 also include any reasonable alternative proposed to the agency by
36 a party that would be subject to the proposed regulation.

37 (c) If the agency does not or cannot comply with the provisions
38 of subdivision (a), it shall state the reasons for noncompliance with
39 reasonable specificity in the rulemaking record. ~~of subdivision (a),~~

1 *the record of the rulemaking proceeding shall justify the reasons*
2 *for noncompliance by substantial evidence.*

3 ~~(d) The provisions of this section shall not be subject to judicial~~
4 ~~review.~~

5 SEC. 9. Section 11346.5 of the Government Code is amended
6 to read:

7 11346.5. (a) The notice of proposed adoption, amendment, or
8 repeal of a regulation shall include the following:

9 (1) A statement of the time, place, and nature of proceedings
10 for adoption, amendment, or repeal of the regulation.

11 (2) Reference to the authority under which the regulation is
12 proposed and a reference to the particular code sections or other
13 provisions of law that are being implemented, interpreted, or made
14 specific.

15 (3) An informative digest drafted in plain English in a format
16 similar to the Legislative Counsel's digest on legislative bills. The
17 informative digest shall include the following:

18 (A) A concise and clear summary of existing laws and
19 regulations, if any, related directly to the proposed action and of
20 the effect of the proposed action.

21 (B) If the proposed action differs substantially from an existing
22 comparable federal regulation or statute, a brief description of the
23 significant differences and the full citation of the federal regulations
24 or statutes.

25 (C) A policy statement overview explaining the broad objectives
26 of the regulation and the specific benefits anticipated by the
27 proposed regulation.

28 (D) An evaluation of whether the proposed regulation is
29 inconsistent or incompatible with other regulations.

30 (4) Any other matters as are prescribed by statute applicable to
31 the specific state agency or to any specific regulation or class of
32 regulations.

33 (5) A determination as to whether the regulation imposes a
34 mandate on local agencies or school districts and, if so, whether
35 the mandate requires state reimbursement pursuant to Part 7
36 (commencing with Section 17500) of Division 4.

37 (6) An estimate, prepared in accordance with instructions
38 adopted by the Department of Finance, of the cost or savings to
39 any state agency, the cost to any local agency or school district
40 that is required to be reimbursed under Part 7 (commencing with

1 Section 17500) of Division 4, other nondiscretionary cost or
2 savings imposed on local agencies, and the cost or savings in
3 federal funding to the state.

4 For purposes of this paragraph, “cost or savings” means
5 additional costs or savings, both direct and indirect, that a public
6 agency necessarily incurs in reasonable compliance with
7 regulations.

8 (7) If a state agency, in proposing to adopt, amend, or repeal
9 any administrative regulation, makes an initial determination that
10 the action may have a significant, statewide adverse economic
11 impact directly affecting business, including the ability of
12 California businesses to compete with businesses in other states,
13 it shall include the following information in the notice of proposed
14 action:

15 (A) Identification of the types of businesses that would be
16 affected.

17 (B) A description of the projected reporting, recordkeeping, and
18 other compliance requirements that would result from the proposed
19 action.

20 (C) The following statement: “The (name of agency) has made
21 an initial determination that the (adoption/amendment/repeal) of
22 this regulation may have a significant, statewide adverse economic
23 impact directly affecting business, including the ability of
24 California businesses to compete with businesses in other states.
25 The (name of agency) (has/has not) considered proposed
26 alternatives that would lessen any adverse economic impact on
27 business and invites you to submit proposals. Submissions may
28 include the following considerations:

29 (i) The establishment of differing compliance or reporting
30 requirements or timetables that take into account the resources
31 available to businesses.

32 (ii) Consolidation or simplification of compliance and reporting
33 requirements for businesses.

34 (iii) The use of performance standards rather than prescriptive
35 standards.

36 (iv) Exemption or partial exemption from the regulatory
37 requirements for businesses.”

38 (8) If a state agency, in adopting, amending, or repealing any
39 administrative regulation, makes an initial determination that the
40 action will not have a significant, statewide adverse economic

1 impact directly affecting business, including the ability of
2 California businesses to compete with businesses in other states,
3 it shall make a declaration to that effect in the notice of proposed
4 action. In making this declaration, the agency shall provide in the
5 record facts, evidence, documents, testimony, or other evidence
6 upon which the agency relies to support its initial determination.

7 (9) A description of all cost impacts, known to the agency at
8 the time the notice of proposed action is submitted to the office,
9 that a representative private person or business would necessarily
10 incur in reasonable compliance with the proposed action.

11 (10) (A) A statement of the results of the economic assessment
12 required by subdivision (a) of Section 11346.3 and the approval
13 from the Office of Economic and Regulatory Analysis as required
14 pursuant to Section 11346.3.

15 (B) For a major regulation, a statement of the results of the
16 ~~additional economic~~ *economic competitiveness* assessment required
17 by subdivision (a) of Section 11346.35 and the approval from the
18 Office of Regulatory and Economic Analysis as required pursuant
19 to subdivision (c) of Section 11346.35.

20 (11) The finding prescribed by subdivision (c) of Section
21 11346.3, if required.

22 (12) A statement that the action would have a significant effect
23 on housing costs, if a state agency, in adopting, amending, or
24 repealing any administrative regulation, makes an initial
25 determination that the action would have that effect. In addition,
26 the agency officer designated in paragraph (14), shall make
27 available to the public, upon request, the agency's evaluation, if
28 any, of the effect of the proposed regulatory action on housing
29 costs.

30 (13) A statement that the adopting agency must determine that
31 no reasonable alternative considered by the agency or that has
32 otherwise been identified and brought to the attention of the agency
33 would be more effective in carrying out the purpose for which the
34 action is proposed or would be as effective and less burdensome
35 to affected private persons than the proposed action.

36 (14) The name and telephone number of the agency
37 representative and designated backup contact person to whom
38 inquiries concerning the proposed administrative action may be
39 directed.

1 (15) The date by which comments submitted in writing must
2 be received to present statements, arguments, or contentions in
3 writing relating to the proposed action in order for them to be
4 considered by the state agency before it adopts, amends, or repeals
5 a regulation.

6 (16) Reference to the fact that the agency proposing the action
7 has prepared a statement of the reasons for the proposed action,
8 has available all the information upon which its proposal is based,
9 and has available the express terms of the proposed action, pursuant
10 to subdivision (b).

11 (17) A statement that if a public hearing is not scheduled, any
12 interested person or his or her duly authorized representative may
13 request, no later than 15 days prior to the close of the written
14 comment period, a public hearing pursuant to Section 11346.8.

15 (18) A statement indicating that the full text of a regulation
16 changed pursuant to Section 11346.8 will be available for at least
17 15 days prior to the date on which the agency adopts, amends, or
18 repeals the resulting regulation.

19 (19) A statement explaining how to obtain a copy of the final
20 statement of reasons once it has been prepared pursuant to
21 subdivision (a) of Section 11346.9.

22 (20) If the agency maintains an Internet Web site or other similar
23 forum for the electronic publication or distribution of written
24 material, a statement explaining how materials published or
25 distributed through that forum can be accessed.

26 (b) The agency representative designated in paragraph (14) of
27 subdivision (a) shall make available to the public upon request the
28 express terms of the proposed action. The representative shall also
29 make available to the public upon request the location of public
30 records, including reports, documentation, and other materials,
31 related to the proposed action. If the representative receives an
32 inquiry regarding the proposed action that the representative cannot
33 answer, the representative shall refer the inquiry to another person
34 in the agency for a prompt response.

35 (c) This section shall not be construed in any manner that results
36 in the invalidation of a regulation because of the alleged inadequacy
37 of the notice content or the summary or cost estimates, or the
38 alleged inadequacy or inaccuracy of the housing cost estimates, if
39 there has been substantial compliance with those requirements.

SEC. 10. Section 11346.9 of the Government Code is amended to read:

11346.9. Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.

(2) A determination as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts. If the determination is that adoption, amendment, or repeal of the regulation would impose a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action. The agency may aggregate and summarize repetitive or irrelevant comments as a group, and may respond to repetitive comments or summarily dismiss irrelevant comments as a group. For the purposes of this paragraph, a comment is "irrelevant" if it is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.

(4) A determination with supporting information that no alternative considered by the agency would be more-effective *cost-effective* in carrying out the purpose for which the regulation is proposed ~~or would be as effective and less burdensome to~~

1 ~~affected private persons than the adopted regulation.~~ For a major
2 regulation, the determination shall be based upon the economic
3 *competitiveness* assessments of the proposed regulation and each
4 of the alternatives considered by the agency, as required pursuant
5 to subdivision (a) of Section 11346.35. The agency shall include,
6 as supporting information, the approval of the economic
7 *competitiveness* assessments by the Office of Economic and
8 Regulatory Analysis, as required pursuant to Section 11346.35.

9 (5) An explanation setting forth the reasons for rejecting any
10 proposed alternatives that would lessen the adverse economic
11 impact on small businesses. For a major regulation, the explanation
12 shall be based upon the economic *competitiveness* assessments of
13 the proposed regulation and each of the alternatives considered by
14 the agency, as required pursuant to subdivision (a) of Section
15 11346.35. The agency shall include, as supporting information,
16 the approval of the economic *competitiveness* assessments by the
17 Office of Economic and Regulatory Analysis, as required pursuant
18 to Section 11346.35.

19 (b) Prepare and submit to the office with the adopted regulation
20 an updated informative digest containing a clear and concise
21 summary of the immediately preceding laws and regulations, if
22 any, relating directly to the adopted, amended, or repealed
23 regulation and the effect of the adopted, amended, or repealed
24 regulation. The informative digest shall be drafted in a format
25 similar to the Legislative Counsel's Digest on legislative bills.

26 (c) A state agency that adopts or amends a regulation mandated
27 by federal law or regulations, the provisions of which are identical
28 to a previously adopted or amended federal regulation, shall be
29 deemed to have complied with this section if a statement to the
30 effect that a federally mandated regulation or amendment to a
31 regulation is being proposed, together with a citation to where an
32 explanation of the provisions of the regulation can be found, is
33 included in the notice of proposed adoption or amendment prepared
34 pursuant to Section 11346.5. However, the agency shall comply
35 fully with this chapter with respect to any provisions in the
36 regulation which the agency proposes to adopt or amend that are
37 different from the corresponding provisions of the federal
38 regulation.

39 (d) If an agency determines that a requirement of this section
40 can be satisfied by reference to an agency statement made pursuant

1 to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy
2 the requirement by incorporating the relevant statement by
3 reference.

4 SEC. 11. Section 11349 of the Government Code is amended
5 to read:

6 11349. The following definitions govern the interpretation of
7 this chapter:

8 (a) “Necessity” means the record of the rulemaking proceeding
9 demonstrates by ~~substantial~~ *a preponderance of the evidence* the
10 need for a regulation to effectuate the purpose of the statute, court
11 decision, or other provision of law that the regulation implements,
12 interprets, or makes specific, taking into account the totality of the
13 record. For purposes of this standard, evidence includes, but is not
14 limited to, facts, studies, and expert opinion.

15 (b) “Authority” means the provision of law which permits or
16 obligates the agency to adopt, amend, or repeal a regulation.

17 (c) “Clarity” means written or displayed so that the meaning of
18 regulations will be easily understood by those persons directly
19 affected by them.

20 (d) “Consistency” means being in harmony with, and not in
21 conflict with or contradictory to, existing statutes, court decisions,
22 *other regulations*, or other provisions of law.

23 (e) “Reference” means the statute, court decision, or other
24 provision of law which the agency implements, interprets, or makes
25 specific by adopting, amending, or repealing a regulation.

26 (f) “Nonduplication” means that a regulation does not serve the
27 same purpose as a state or federal statute or another regulation.
28 This standard requires that an agency proposing to amend or adopt
29 a regulation must identify any state or federal statute or regulation
30 which is overlapped or duplicated by the proposed regulation and
31 justify any overlap or duplication. This standard is not intended
32 to prohibit state agencies from printing relevant portions of
33 enabling legislation in regulations when the duplication is necessary
34 to satisfy the clarity standard in paragraph (3) of subdivision (a)
35 of Section 11349.1. This standard is intended to prevent the
36 indiscriminate incorporation of statutory language in a regulation.

37 (g) ~~“Cost-effectiveness” or “cost-effective”~~ *“Competitiveness”*
38 means that the record of the rulemaking proceeding demonstrates
39 by a preponderance of the evidence that a proposed major
40 regulation ~~would be the least costly alternative to those persons~~

1 ~~subject to the regulation and would be at least equally effective in~~
2 ~~effectuating~~ *would be the most protective of California jobs, a*
3 *competitive business climate in this state, and state revenue*
4 *sources, as compared to alternatives and the results of the*
5 *economic competitiveness assessment required pursuant to Section*
6 *11346.35, in effectuating* the purpose of the authorizing statute,
7 court decision, or other provision of law that the major regulation
8 implements, interprets, or makes specific.

9 SEC. 12. Section 11349.1 of the Government Code is amended
10 to read:

11 11349.1. (a) The office shall review all regulations adopted,
12 amended, or repealed pursuant to the procedure specified in Article
13 5 (commencing with Section 11346) and submitted to it for
14 publication in the California Code of Regulations Supplement and
15 for transmittal to the Secretary of State and make determinations
16 using all of the following standards:

- 17 (1) Necessity.
- 18 (2) Authority.
- 19 (3) Clarity.
- 20 (4) Consistency.
- 21 (5) Reference.
- 22 (6) Nonduplication.
- 23 (7) ~~Cost-effectiveness~~ *Competitiveness*, for a major regulation.

24 In reviewing regulations pursuant to this section, the office shall
25 restrict its review to the regulation and the record of the rulemaking
26 proceeding. The office shall approve the regulation or order of
27 repeal if it complies with the standards set forth in this section and
28 with this chapter.

29 (b) In reviewing proposed regulations for the criteria in
30 subdivision (a), the office may consider the clarity of the proposed
31 regulation in the context of related regulations already in existence.

32 (c) The office shall adopt regulations governing the procedures
33 it uses in reviewing regulations submitted to it. The regulations
34 shall provide for an orderly review and shall specify the methods,
35 standards, presumptions, and principles the office uses, and the
36 limitations it observes, in reviewing regulations to establish
37 compliance with the standards specified in subdivision (a). The
38 regulations adopted by the office shall ensure that it does not
39 substitute its judgment for that of the rulemaking agency as
40 expressed in the substantive content of adopted regulations.

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) (A) The agency has not complied with Section 11346.3. For purposes of this subparagraph, noncompliance shall include a failure by the agency to demonstrate approval of the economic assessment of the proposed regulation by the Office of Economic and Regulatory Analysis.

(B) For a major regulation, the agency has not complied with Section 11346.35. For purposes of this subparagraph, noncompliance shall include ~~a failure by the agency to demonstrate approval of the economic assessment of the proposed regulation by the Office of Economic and Regulatory Analysis, a failure by~~ *a failure* by the agency to prepare, and receive approval of, an ~~additional~~ economic *competitiveness* assessment for each alternative considered by the agency, including an economic *competitiveness* assessment of each reasonable alternative proposed by a party that would be subject to the proposed regulation.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(4) The proposed regulation conflicts with an existing regulation and the agency has not identified the manner in which the conflict may be resolved.

~~(5) For a major regulation, the office determines that the agency is not proposing to adopt the most efficient and cost-effective regulatory alternative.~~

(5) For a major regulation, the agency is not proposing to adopt the regulatory alternative that meets the competitiveness standard.

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

SEC. 13. Section 11349.3 of the Government Code is amended to read:

11349.3. (a) The office shall either approve a regulation submitted to it for review and transmit it to the Secretary of State for filing or disapprove it within 60 working days after the regulation has been submitted to the office for review. If the office fails to act within 60 days, the regulation shall be deemed to have

1 been approved and the office shall transmit it to the Secretary of
2 State for filing.

3 (b) If the office disapproves a regulation, it shall return it to the
4 adopting agency within the 60-day period specified in subdivision
5 (a) accompanied by a notice specifying the reasons for disapproval.
6 Within seven calendar days of the issuance of the notice, the office
7 shall provide the adopting agency with a written decision detailing
8 the reasons for disapproval. No regulation shall be disapproved
9 except for failure to comply with the standards set forth in Section
10 11349.1 or for failure to comply with this chapter.

11 (c) If an agency determines, on its own initiative, that a
12 regulation submitted pursuant to subdivision (a) should be returned
13 by the office prior to completion of the office's review, it may
14 request the return of the regulation. All requests for the return of
15 a regulation shall be memorialized in writing by the submitting
16 agency no later than one week following the request. Any
17 regulation returned pursuant to this subdivision shall be resubmitted
18 to the office for review within the one-year period specified in
19 subdivision (b) of Section 11346.4 or shall comply with Article 5
20 (commencing with Section 11346) prior to resubmission.

21 (d) The office shall not initiate the return of a regulation pursuant
22 to subdivision (c) as an alternative to disapproval pursuant to
23 subdivision (b).

24 SEC. 14. Section 11349.5 of the Government Code is repealed.

25 SEC. 15. Section 11349.7 of the Government Code is amended
26 to read:

27 11349.7. The office, at the request of any standing, select, or
28 joint committee of the Legislature, or upon its own determination
29 pursuant to Section 11349.75, shall initiate a priority review of
30 any regulation, group of regulations, or series of regulations that
31 the committee believes does not meet the standards set forth in
32 Section 11349.1.

33 The office shall notify interested persons and shall publish notice
34 in the California Regulatory Notice Register that a priority review
35 has been requested, shall consider the written comments submitted
36 by interested persons, the information contained in the rulemaking
37 record, if any, and shall complete each priority review made
38 pursuant to this section within 90 calendar days of the receipt of
39 the committee's written request or, for a review initiated pursuant
40 to Section 11349.75, the date the notice is published in the

1 California Regulatory Notice Register *indicating* that the review
2 process has been initiated. During the period of any priority review
3 made pursuant to this section, all information available to the office
4 relating to the priority review shall be made available to the public.
5 In the event that the office determines that a regulation does not
6 meet the standards set forth in Section 11349.1, it shall order the
7 adopting agency to show cause why the regulation should not be
8 repealed and shall proceed to seek repeal of the regulation as
9 provided by this section in accordance with the following:

10 (a) In the event it determines that any of the regulations subject
11 to the review do not meet the standards set forth in Section 11349.1,
12 the office shall within 15 days of the determination order the
13 adopting agency to show cause why the regulation should not be
14 *amended or* repealed. In issuing the order, the office shall specify
15 in writing the reasons for its determination that the regulation does
16 not meet the standards set forth in Section 11349.1. The reasons
17 for its determination shall be made available to the public. The
18 office shall also publish its order and the reasons therefor in the
19 California Regulatory Notice Register. In the case of a regulation
20 for which no, or inadequate, information relating to its necessity
21 can be furnished by the adopting agency, the order shall specify
22 the information which the office requires to make its determination.

23 (b) No later than 60 days following receipt of an order to show
24 cause why a regulation should not be repealed, the agency shall
25 respond in writing to the office. Upon written application by the
26 agency, the office may extend the time for an additional 30 days.

27 (c) The office shall review and consider all information
28 submitted by the agency in a timely response to the order to show
29 cause why the regulation should not be repealed, and determine
30 whether the regulation meets the standards set forth in Section
31 11349.1. The office shall make this determination within 60 days
32 of receipt of an agency's response to the order to show cause. ~~If~~
33 ~~the office does not make a determination within 60 days of receipt~~
34 ~~of an agency's response to the order to show cause, the regulation~~
35 ~~shall be deemed to meet the standards set forth in subdivision (a)~~
36 ~~of Section 11349.1.~~ In making this determination, the office shall
37 also review any written comments submitted to it by the public
38 within 30 days of the publication of the order to show cause in the
39 California Regulatory Notice Register. During the period of review
40 and consideration, the information available to the office relating

1 to each regulation for which the office has issued an order to show
2 cause shall be made available to the public. The office shall notify
3 the adopting agency within two working days of the receipt of
4 information submitted by the public regarding a regulation for
5 ~~which an order to show cause has been issued. If the office~~
6 ~~determines that a regulation fails to meet the standards, it shall~~
7 ~~which an order to show cause has been issued.~~

8 (d) *If the office determines that a regulation fails to meet the*
9 *standards set forth in Section 11349.1, it shall* prepare a statement
10 specifying the reasons for its determination. The statement shall
11 be delivered to the adopting agency, the Legislature, and the
12 Governor and shall be made available to the public and the courts.
13 Thirty days after delivery of the statement required by this
14 subdivision the office shall prepare an order of repeal of the
15 regulation and shall transmit it to the Secretary of State for filing.
16 However, the office shall not prepare the order of repeal if, within
17 those 30 days, the agency undertakes to amend the regulation
18 pursuant to Article 5 (commencing with Section 11346), in a
19 manner that will eliminate the identified deficiency for the
20 regulation.

21 ~~(d)~~

22 (e) In the event that the office orders the repeal of a regulation,
23 it shall publish the order and the reasons therefor in the California
24 Regulatory Notice Register.

25 ~~SEC. 16. Section 11349.73 is added to the Government Code,~~
26 ~~to read:~~

27 ~~11349.73. (a) A major regulation shall be subject to a~~
28 ~~mandatory priority review pursuant to Section 11349.7, which the~~
29 ~~office shall initiate seven years from the date the regulation is~~
30 ~~implemented.~~

31 ~~(b) The agency shall prepare an updated economic assessment~~
32 ~~pursuant to Sections 11346.3 and 11346.35, which shall be subject~~
33 ~~to approval by the Office of Economic and Regulatory Analysis~~
34 ~~pursuant to Section 13093.~~

35 ~~(c) The agency shall submit the approved updated economic~~
36 ~~assessment to the office as part of the priority review. Failure to~~
37 ~~provide an approved updated economic assessment shall be grounds~~
38 ~~for the office to order the repeal of the regulation. The office shall~~
39 ~~consider the approved updated economic assessment, among other~~
40 ~~information submitted by the agency, in its determination of~~

1 ~~whether the regulation meets the standards set forth in Section~~
2 ~~11349.1.~~

3 ~~SEC. 17.~~

4 *SEC. 16.* Section 11349.75 is added to the Government Code,
5 to read:

6 11349.75. (a) The office shall convene public workshops, no
7 less than one time annually, to solicit stakeholder input to identify
8 major regulations, groups of major regulations, or series of major
9 regulations that should be subject to a priority review pursuant to
10 Section 11349.7. In particular, the office shall request stakeholders,
11 including agencies, to demonstrate whether major regulations
12 satisfy the standards for review established in Section 11349.1. At
13 least 30 days prior to the public workshop, the office shall notify
14 interested persons and shall publish notice in the California
15 Regulatory Notice Register that a public workshop will be held to
16 identify major regulations that should be subject to a priority review
17 pursuant to Section 11349.7. The office shall consider the written
18 comments and information submitted by interested persons at the
19 public workshop.

20 (b) Within 30 days of a public workshop, based on the written
21 comments submitted by interested persons and the information
22 provided at the public workshop, the office shall make an initial
23 determination whether a major regulation continues to meet the
24 standards of review established in Section 11349.1 and shall notify
25 the adopting agency in writing of the determination. *The office*
26 *shall make a determination that a major regulation does not meet*
27 *the standards of review only if an alternative is proposed.* If the
28 office makes an initial determination that the *major* regulation
29 does not meet the standards of review in Section 11349.1 ~~it may,~~
30 *and an alternative has been proposed, it shall* require a priority
31 review of the regulation pursuant to Section 11349.7. The office
32 shall provide written notification of this determination to the
33 adopting agency and shall publish notice in the California
34 Regulatory Notice Register that a priority review has been initiated.

35 (c) The office shall prioritize major regulations for a priority
36 review that the interested persons are able to demonstrate, by
37 substantial evidence, are not utilizing the most cost-effective
38 alternative.

39 ~~SEC. 18.~~ Section 11352 of the Government Code is amended
40 to read:

1 ~~11352. The following actions are not subject to this chapter:~~

2 ~~(a) The issuance, denial, or waiver of any water quality~~
3 ~~certification as authorized under Section 13160 of the Water Code.~~

4 ~~(b) The issuance, denial, or revocation of waste discharge~~
5 ~~requirements and permits to individual applicants pursuant to~~
6 ~~Sections 13263 and 13377 of the Water Code and waivers issued~~
7 ~~to individual applicants pursuant to Section 13269 of the Water~~
8 ~~Code. The exception in this subdivision shall not apply to any~~
9 ~~issuance, denial, or revocation of waste discharge requirements~~
10 ~~and permits issued pursuant to Sections 13263 and 13377 of the~~
11 ~~Water Code and waivers issued pursuant to Section 13269 of the~~
12 ~~Water Code, as to actions taken by the State Water Resources~~
13 ~~Control Board if the waste discharge requirement, permit, or waiver~~
14 ~~is applicable statewide or in an entire region, and as to actions~~
15 ~~taken by a regional water quality control board if the waste~~
16 ~~discharge requirement, permit, or waiver is applicable throughout~~
17 ~~the region, including, but not limited to, comprehensive conditional~~
18 ~~waivers adopted by regional boards pursuant to the Irrigated Lands~~
19 ~~Regulatory Program.~~

20 ~~(c) The development, issuance, and use of the guidance~~
21 ~~document pursuant to Section 13383.7 of the Water Code.~~

22 ~~SEC. 17. Section 11352 of the Government Code is amended~~
23 ~~to read:~~

24 ~~11352. The following actions are not subject to this chapter:~~

25 ~~(a) The issuance, denial, or waiver of any water quality~~
26 ~~certification as authorized under Section 13160 of the Water Code.~~

27 ~~(b) The issuance, denial, or revocation of waste discharge~~
28 ~~requirements and permits to individual applicants pursuant to~~
29 ~~Sections 13263 and 13377 of the Water Code and waivers issued~~
30 ~~to individual applicants pursuant to Section 13269 of the Water~~
31 ~~Code. However, the exception described in this subdivision shall~~
32 ~~not apply to the adoption, amendment, or repeal of the program~~
33 ~~for which the conditions of waste discharge requirements and~~
34 ~~permits issued pursuant to Sections 13263 and 13377 of the Water~~
35 ~~Code and waivers pursuant to Section 13269 are established.~~

36 ~~(c) The development, issuance, and use of the guidance~~
37 ~~document pursuant to Section 13383.7 of the Water Code.~~

38 ~~SEC. 19:~~

39 ~~SEC. 18. Section 11353 of the Government Code is amended~~
40 ~~to read:~~

1 11353. (a) Except as provided in subdivision (b) and (c), this
2 chapter does not apply to the adoption or revision of state policy
3 for water quality control and the adoption or revision of water
4 quality control plans and guidelines pursuant to Division 7
5 (commencing with Section 13000) of the Water Code.

6 (b) (1) Any policy, plan, or guideline, or any revision thereof,
7 that the State Water Resources Control Board has adopted or that
8 a court determines is subject to this part, after June 1, 1992, shall
9 be submitted to the office.

10 (2) The State Water Resources Control Board shall include in
11 its submittal to the office all of the following:

12 (A) A clear and concise summary of any regulatory provisions
13 adopted or approved as part of that action, for publication in the
14 California Code of Regulations.

15 (B) The administrative record for the proceeding. Proposed
16 additions to a policy, plan, or guideline shall be indicated by
17 underlined text and proposed deletions shall be indicated by
18 strike-through text in documents submitted as part of the
19 administrative record for the proceeding.

20 (C) A summary of the necessity for the regulatory provision.

21 (D) A certification by the chief legal officer of the State Water
22 Resources Control Board that the action was taken in compliance
23 with all applicable procedural requirements of Division 7
24 (commencing with Section 13000) of the Water Code.

25 (E) The results of the economic assessment required by Section
26 11346.3 and, for a major regulation, the ~~additional economic~~
27 *economic competitiveness* assessment required by Section
28 11346.35.

29 (3) Paragraph (2) does not limit the authority of the office to
30 review any regulatory provision which is part of the policy, plan,
31 or guideline submitted by the State Water Resources Control Board.

32 (4) The office shall review the regulatory provisions to
33 determine compliance with the standards of necessity, authority,
34 clarity, consistency, reference, nonduplication, and efficiency set
35 forth in subdivision (a) of Section 11349.1. The office shall also
36 review the responses to public comments prepared by the State
37 Water Resources Control Board or the appropriate regional water
38 quality control board to determine compliance with the public
39 participation requirements of the Federal Water Pollution Control
40 Act (33 U.S.C. Sec. 1251 et seq.). The office shall review the

1 regulatory provisions for compliance with the economic assessment
2 required by Section 11346.3 and, for a major regulation, the
3 ~~additional economic~~ *economic competitiveness* assessment required
4 by Section 11346.35. The office shall restrict its review to the
5 regulatory provisions and the administrative record of the
6 proceeding. Sections 11349.3, 11349.4, and 11350.3 shall apply
7 to the review by the office to the extent that those sections are
8 consistent with this section.

9 (5) The policy, plan, guideline, or revision shall not become
10 effective unless and until the regulatory provisions are approved
11 by the office in accordance with subdivision (a) of Section 11349.3.

12 (6) Upon approval of the regulatory provisions, the office shall
13 transmit to the Secretary of State for filing the clear and concise
14 summary of the regulatory provisions submitted by the State Water
15 Resources Control Board.

16 (7) Any proceedings before the State Water Resources Control
17 Board or a California regional water quality control board to take
18 any action subject to this subdivision shall be conducted in
19 accordance with the procedural requirements of Division 7
20 (commencing with Section 13000) of the Water Code, together
21 with any applicable requirements of the Federal Water Pollution
22 Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements
23 of this chapter, other than the requirements of this section, shall
24 not apply.

25 (8) This subdivision shall not provide a basis for review by the
26 office under this subdivision or Article 6 (commencing with
27 Section 11349) of any such policy, plan, or guideline adopted or
28 revised prior to June 1, 1992.

29 (c) The State Water Resources Control Board shall perform the
30 economic assessment required by Section 11346.3 and, for a major
31 regulation, the ~~additional economic~~ *economic competitiveness*
32 assessment required by Section 11346.35 for any policy, plan, or
33 guideline, or any revision thereof, that it adopts after July 1, 2012.

34 (d) Subdivision (a) does not apply to a provision of any policy,
35 plan, guideline, or revision, as applied to any person who, as of
36 June 1, 1992, was a party to a civil action challenging that provision
37 on the grounds that it has not been adopted as a regulation pursuant
38 to this chapter.

39 (e) Copies of the policies, plans, and guidelines to which
40 subdivision (a) applies shall be maintained at central locations for

1 inspection by the public. The State Water Resources Control Board
2 shall maintain, at its headquarters in Sacramento, a current copy
3 of each policy, plan, or guideline in effect. Each regional water
4 quality control board shall maintain at its headquarters a current
5 copy of each policy, plan, or guideline in effect in its respective
6 region. Any revision of a policy, plan, or guideline shall be made
7 available for inspection by the public within 30 days of its effective
8 date.

9 ~~SEC. 20.~~

10 *SEC. 19.* Section 11354.1 of the Government Code is amended
11 to read:

12 11354.1. (a) For purposes of this section, “commission” means
13 the San Francisco Bay Conservation and Development
14 Commission.

15 (b) This chapter does not apply to any policy, plan, or guideline
16 adopted by the commission prior to January 1, 1996, pursuant to
17 Chapter 5 (commencing with Section 66650) of Title 7.2 of this
18 code or Division 19 (commencing with Section 29000) of the
19 Public Resources Code.

20 (c) The issuance or denial by the commission of any permit
21 pursuant to subdivision (a) of Section 66632, and the issuance or
22 denial by, or appeal to, the commission of any permit pursuant to
23 Chapter 6 (commencing with Section 29500) of Division 19 of the
24 Public Resources Code, are not subject to this chapter.

25 (d) (1) Any amendments or other changes to the San Francisco
26 Bay Plan or to a special area plan pursuant to Chapter 5
27 (commencing with Section 66650) of Title 7.2, adopted by the
28 commission on or after January 1, 1996, and any amendments or
29 other changes to the Suisun Marsh Protection Plan, as defined in
30 Section 29113 of the Public Resources Code, or in the Suisun
31 Marsh local protection program, as defined in Section 29111 of
32 the Public Resources Code, adopted by the commission on and
33 after January 1, 1996, shall be submitted to the office but are not
34 subject to this chapter except as provided in this subdivision.

35 (2) The commission shall include in its submittal to the office
36 pursuant to paragraph (1) both of the following documents:

37 (A) A clear and concise summary of any regulatory provision
38 adopted or approved by the commission as part of the proposed
39 change for publication in the California Code of Regulations.

1 (B) The administrative record for the proceeding, and a list of
2 the documents relied upon in making the change. Proposed
3 additions to the plans shall be indicated by underlined text, and
4 proposed deletions shall be indicated by strike-through text in
5 documents submitted as part of the administrative record for the
6 proceeding.

7 (3) The office shall review the regulatory provisions to
8 determine compliance with the standards of necessity, authority,
9 clarity, consistency, reference, and nonduplication set forth in
10 subdivision (a) of Section 11349.1. The office shall also review
11 the responses to public comments prepared by the commission to
12 determine compliance with the public participation requirements
13 of Sections 11000 to 11007, inclusive, of Title 14 of the California
14 Code of Regulations, and to ensure that the commission considers
15 all relevant matters presented to it before adopting, amending, or
16 repealing any regulatory provision, and that the commission
17 explains the reasons for not modifying a proposed plan change to
18 accommodate an objection or recommendation. The office shall
19 restrict its review to the regulatory provisions and the
20 administrative record of the proceeding. Sections 11349.3, 11349.4,
21 and 11350.3 shall apply to the review by the office to the extent
22 that those sections are consistent with this section.

23 (4) In reviewing proposed changes to the commission's plans
24 for the criteria specified in subdivision (a) of Section 11349.1, the
25 office shall consider the clarity of the proposed plan change in the
26 context of the commission's existing plans.

27 (5) The proposed plan or program change subject to this
28 subdivision shall not become effective unless and until the
29 regulatory provisions are approved by the office in accordance
30 with subdivision (a) of Section 11349.3.

31 (6) Upon approval of the regulatory provisions, the office shall
32 transmit to the Secretary of State for filing the clear and concise
33 summary of the regulatory provisions submitted by the
34 commission.

35 (e) Except as provided in subdivisions (b), (c), and (d), the
36 adoption of any regulation by the commission shall be subject to
37 this chapter in all respects.

1 ~~SEC. 24.~~

2 SEC. 20. Article 1.5 (commencing with Section 13090) is added
3 to Chapter 2 of Part 3 of Division 3 of the Government Code, to
4 read:

5
6 Article 1.5. Office of Economic and Regulatory Analysis
7

8 13090. There is within the Department of Finance, the Office
9 of Economic and Regulatory Analysis. Pursuant to this chapter,
10 the office shall review and approve economic ~~analyses~~ *assessments*,
11 *including economic competitiveness assessments*, of proposed
12 regulations, review alternative analyses of regulations, and set
13 standards for economic analyses and alternative ~~analyses~~
14 *assessments, including economic competitiveness assessments.*

15 13091. (a) The office shall be under the direction and control
16 of the Director of Finance, who shall administer this chapter and
17 perform all duties, exercise all powers, and discharge all
18 responsibilities under the jurisdiction of the office.

19 (b) The office may employ personnel necessary to carry out the
20 purposes of this article. All personnel shall be appointed pursuant
21 to the State Civil Service Act (Part 2 (commencing with Section
22 18500) of Division 5 of Title 2). The director may also enter into
23 contracts for services of experts in economics and policy analysis
24 for carrying out the purposes of this article.

25 13092. (a) On or before June 30, 2012, the office shall adopt
26 guidelines, including specific methodologies, for agencies to follow
27 in doing all of the following:

28 (1) Preparing economic assessments required by subdivision
29 (b) of Section 11346.3

30 (2) Preparing ~~additional economic~~ *economic competitiveness*
31 assessments for major regulations required by subdivision (a) of
32 Section 11346.35.

33 ~~(3) Selecting the most cost effective alternative for a major~~
34 ~~regulation as required by Section 11349.1.~~

35 (3) *Evaluating the competitiveness of a proposed major*
36 *regulation and alternatives, as required by Section 11349.1.*

37 (b) The department shall publish the adopted guidelines in the
38 State Administrative Manual.

(c) The guidelines adopted pursuant to this article shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

13093. (a) Each state agency proposing to adopt, amend, or repeal a regulation shall submit the economic assessment prepared pursuant to subdivision (b) of Section 11346.3 to the office. Within 30 days of receipt of an economic assessment, the office shall review the economic assessment to determine if the agency prepared the economic assessment consistent with the guidelines established in Section 13092.

(1) The office shall disapprove and return to the agency any economic assessment that it determines is not prepared consistent with the guidelines established in Section 13092. The office shall issue a written statement of its determination to the agency, and notify the Office of Administrative Law, including the specific reasons for the disapproval.

(2) The office shall approve any economic assessment that it determines is prepared consistent with the guidelines established in Section 13092, including, but not limited to, the determination as to whether the regulation is a major regulation. The office shall issue a written statement of its determination to the agency, and notify the Office of Administrative Law of the economic assessment's approval.

(b) Each state agency proposing to adopt, amend, or repeal a major regulation shall submit the ~~additional-economic~~ *economic competitiveness* assessment prepared pursuant to subdivision (a) of Section 11346.35 to the office. Within 30 days of receipt of an economic *competitiveness* assessment, the office shall review the economic *competitiveness* assessment to determine if the agency prepared the economic *competitiveness* assessment consistent with the guidelines established in Section 13092.

(1) The office shall disapprove and return to the agency any ~~additional-economic~~ *economic competitiveness* assessment that it determines is not prepared consistent with the guidelines established in Section 13092. The office shall issue a written statement of ~~their~~ *its* determination to the agency, and notify the Office of Administrative Law, that includes the specific reasons for the disapproval.

(2) The office shall approve any ~~additional-economic~~ *economic competitiveness* assessment that it determines is prepared consistent

1 with the guidelines established in Section 13092. The office shall
2 issue a written statement of ~~their~~ *its* determination to the agency,
3 and notify the Office of Administrative Law, of ~~their~~ *its* approval.

4 ~~SEC. 25.~~

5 *SEC. 21.* Section 311 of the Public Utilities Code is amended
6 to read:

7 311. (a) The commission, each commissioner, the executive
8 director, and the assistant executive directors may administer oaths,
9 certify to all official acts, and issue subpoenas for the attendance
10 of witnesses and the production of papers, waybills, books,
11 accounts, documents, and testimony in any inquiry, investigation,
12 hearing, or proceeding in any part of the state.

13 (b) The administrative law judges may administer oaths,
14 examine witnesses, issue subpoenas, and receive evidence, under
15 rules that the commission adopts.

16 (c) The evidence in any hearing shall be taken by the
17 commissioner or the administrative law judge designated for that
18 purpose. The commissioner or the administrative law judge may
19 receive and exclude evidence offered in the hearing in accordance
20 with the rules of practice and procedure of the commission.

21 (d) Consistent with the procedures contained in Sections 1701.1,
22 1701.2, 1701.3, and 1701.4, the assigned commissioner or the
23 administrative law judge shall prepare and file an opinion setting
24 forth recommendations, findings, and conclusions. The opinion
25 of the assigned commissioner or the administrative law judge is
26 the proposed decision and a part of the public record in the
27 proceeding. The proposed decision of the assigned commissioner
28 or the administrative law judge shall be filed with the commission
29 and served upon all parties to the action or proceeding without
30 undue delay, not later than 90 days after the matter has been
31 submitted for decision. The commission shall issue its decision
32 not sooner than 30 days following filing and service of the
33 proposed decision by the assigned commissioner or the
34 administrative law judge, except that the 30-day period may be
35 reduced or waived by the commission in an unforeseen emergency
36 situation or upon the stipulation of all parties to the proceeding or
37 as otherwise provided by law. The commission may, in issuing its
38 decision, adopt, modify, or set aside the proposed decision or any
39 part of the decision. Where the modification is of a decision in an
40 adjudicatory hearing it shall be based upon the evidence in the

1 record. Every finding, opinion, and order made in the proposed
2 decision and approved or confirmed by the commission shall, upon
3 that approval or confirmation, be the finding, opinion, and order
4 of the commission.

5 (e) Any item appearing on the commission's public agenda as
6 an alternate item to a proposed decision or to a decision subject to
7 subdivision (g) shall be served upon all parties to the proceeding
8 without undue delay and shall be subject to public review and
9 comment before it may be voted upon. For purposes of this
10 subdivision, "alternate" means either a substantive revision to a
11 proposed decision that materially changes the resolution of a
12 contested issue or any substantive addition to the findings of fact,
13 conclusions of law, or ordering paragraphs. The commission shall
14 adopt rules that provide for the time and manner of review and
15 comment and the rescheduling of the item on a subsequent public
16 agenda, except that the item may not be rescheduled for
17 consideration sooner than 30 days following service of the
18 alternative item upon all parties. The alternate item shall be
19 accompanied by a digest that clearly explains the substantive
20 revisions to the proposed decision. The commission's rules may
21 provide that the time and manner of review and comment on an
22 alternate item may be reduced or waived by the commission in an
23 unforeseen emergency situation.

24 (f) The commission may specify that the administrative law
25 judge assigned to a proceeding involving an electrical, gas,
26 telephone, railroad, or water corporation, or a highway carrier,
27 initiated by customer or subscriber complaint need not prepare,
28 file, and serve an opinion, unless the commission finds that to do
29 so is required in the public interest in a particular case.

30 (g) (1) Prior to voting on any commission decision not subject
31 to subdivision (d), the decision shall be served on parties and
32 subject to at least 30 days public review and comment. Any
33 alternate to any commission decision shall be subject to the same
34 requirements as provided for alternate decisions under subdivision
35 (e). For purposes of this subdivision, "decision" also includes
36 resolutions, including resolutions on advice letter filings.

37 (2) The 30-day period may be reduced or waived in an
38 unforeseen emergency situation, upon the stipulation of all parties
39 in the proceeding, for an uncontested matter in which the decision

1 grants the relief requested, or for an order seeking temporary
2 injunctive relief.

3 (3) This subdivision does not apply to uncontested matters that
4 pertain solely to water corporations, or to orders instituting
5 investigations or rulemakings, categorization resolutions under
6 Sections 1701.1 to 1701.4, inclusive, or orders authorized by law
7 to be considered in executive session. Consistent with regulatory
8 efficiency and the need for adequate prior notice and comment on
9 commission decisions, the commission may adopt rules, after
10 notice and comment, establishing additional categories of decisions
11 subject to waiver or reduction of the time period in this section.

12 (h) Notwithstanding any other provision of law, amendments,
13 revisions, or modifications by the commission of its Rules of
14 Practice and Procedure, shall be submitted to the Office of
15 Administrative Law for prior review in accordance with Sections
16 11349, 11349.3, 11349.4, 11349.6, and 11350.3 of, and
17 subdivisions (a) and (b) of Section 11349.1 of, the Government
18 Code. If the commission adopts an emergency revision to its Rules
19 of Practice and Procedure based upon a finding that the revision
20 is necessary for the preservation of the public peace, health and
21 safety, or general welfare, this emergency revision shall only be
22 reviewed by the Office of Administrative Law in accordance with
23 subdivisions (b) to (d), inclusive, of Section 11349.6 of the
24 Government Code. The emergency revision shall become effective
25 upon filing with the Secretary of State and shall remain in effect
26 for no more than 120 days. A petition for writ of review pursuant
27 to Section 1756 of a commission decision amending, revising, or
28 modifying its Rules of Practice and Procedure shall not be filed
29 until the regulation has been approved by the Office of
30 Administrative Law, the Governor, or a court pursuant to Section
31 11350.3 of the Government Code. If the period for filing the
32 petition for writ of review would otherwise have already
33 commenced under Section 1733 or 1756 at the time of that
34 approval, then the period for filing the petition for writ of review
35 shall continue until 30 days after the date of that approval. Nothing
36 in this subdivision shall require the commission to comply with
37 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part
38 1 of Division 3 of Title 2 of the Government Code. This
39 subdivision is only intended to provide for the Office of
40 Administrative Law review of procedural commission decisions

- 1 relating to commission Rules of Practice and Procedure, and not
- 2 general orders, resolutions, or other substantive regulations.
- 3 (i) The commission shall immediately notify the Legislature
- 4 whenever the commission reduces or waives the time period for
- 5 public review and comment due to an unforeseen emergency
- 6 situation, as provided in subdivision (d), (e), or (g).